

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

The proposed amendments update the procedures for home- and community-based services waivers to reflect:

- The use of a streamlined form for gathering information to determine the applicant’s level of care in the waivers for which the criteria are essentially medical. Form 470-4392, Level of Care Certification for HCBS Waiver Program, provides a one-page summary of the essential factors to be completed by the applicant’s primary care provider. The form is used in the AIDS/HIV, elderly, ill and handicapped, and physical disability waivers.
- The merger of separate assessment forms used for different waivers into two forms: Form 470-4694, Case Management Comprehensive Assessment, used in waivers that require Medicaid case management services governed by 441—Chapter 90, “Targeted Case Management” (the brain injury, elderly, intellectual disability, and children’s mental health waivers); and Form 470-5044, Service Worker Comprehensive Assessment, used in waivers that do not require services governed by 441—Chapter 90 (the AIDS/HIV, ill and handicapped, and physical disability waivers). The assessment forms include documentation of the applicant’s choice of waiver services over institutional care.
- The elimination of the requirement for a reconsideration review by the Iowa Medicaid Enterprise before an applicant is allowed to appeal a level-of-care decision. This change streamlines the eligibility determination process.
- Changes in the rules for obtaining a waiver slot to reflect current procedures, including electronic applications, and to make the rules more uniform across waivers.
- Changes in terminology pursuant to 2012 Iowa Acts, Senate File 2247, which changes the term “mental retardation” to “intellectual disability.”

Any interested person may make written comments on the proposed amendments on or before June 19, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because the Department requires adherence to uniform procedures in order to make reliable judgments about applicants’ needs. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

The following amendments are proposed.

ITEM 1. Strike “intermediate care facility for the mentally retarded” wherever it appears in rule **441—83.1(249A)**, definition of “Medical institution,” paragraph **83.8(2)“c,”** rule **441—83.81(249A)**, definition of “Medical institution,” paragraph **83.82(1)“f,”** rule **441—83.101(249A)**, definition of

“Medical institution,” and rule **441—83.121(249A)**, definition of “Medical institution,” and insert “intermediate care facility for persons with an intellectual disability” in lieu thereof.

ITEM 2. Amend paragraph **83.2(1)“d”** as follows:

*d.* The person must be certified as being in need of nursing facility or skilled nursing facility level of care or as being in need of care in an intermediate care facility for ~~the mentally retarded persons with an intellectual disability~~, based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person’s condition, and annually for reassessment of the person’s level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) Ill and handicapped waiver services will not be provided when the ~~individual~~ person is an inpatient in a medical institution.

ITEM 3. Amend subparagraph **83.2(2)“a”(1)** as follows:

(1) This service plan shall be based, in part, on information in the completed ~~Home and Community-Based Services Assessment or Reassessment Service Worker Comprehensive Assessment, Form 470-0659~~ 470-5044. ~~Form 470-0659 is 470-5044 shall be completed annually, or more frequently upon request or when there are changes in the consumer’s condition.~~ The service worker shall have a face-to-face visit with the ~~consumer member~~ at least annually.

ITEM 4. Strike “ICF/MR” wherever it appears in paragraphs **83.2(2)“b”** and **83.61(1)“c,”** subparagraph **83.61(1)“k”(3)**, paragraphs **83.62(3)“c”** and **83.82(1)“f,”** subparagraph **83.82(2)“a”(4)**, and rule **441—83.90(249A)** and insert “ICF/ID” in lieu thereof.

ITEM 5. Amend paragraphs **83.3(2)“a”** and **“b”** as follows:

*a.* The county department office shall ~~contact the bureau of long-term care for all applicants for the waiver~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a payment slot is available.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry by the end of the fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid ~~recipients~~ members, the county department office shall ~~contact the bureau~~ make the entry by the end of the fifth working day after receipt of either Form 470-0659, ~~Home and Community-Based Services Assessment or Reassessment~~, with the choice of HCBS waiver indicated by ~~signature of the consumer or a written request signed and dated by the consumer applicant.~~

(3) and (4) No change.

*b.* If no payment slot is available, the ~~bureau of long-term care~~ department shall enter persons on a waiting list according to the following:

(1) ~~Consumers~~ Applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~date stamped in the county~~ received by the department office or upon the ~~county department office’s~~ receipt of disability determination, whichever is later.

(2) ~~Consumers~~ Applicants currently eligible for Medicaid shall be added to the waiting list on the basis of the date a request as specified in 83.3(2)“a”(2) is ~~date stamped in the county~~ received by the department office.

(3) to (5) No change.

ITEM 6. Amend subparagraphs **83.3(3)“a”(4)** and **(5)** as follows:

(4) The application is pending because a level of care determination has not been made although the completed assessment, Form 470-0659, ~~Home and Community-Based Services Assessment or~~

~~Reassessment~~ 470-4392, Level of Care Certification for HCBS Waiver Program, has been submitted to the IME medical services unit.

(5) The application is pending because the assessment, Form ~~470-0659~~ 470-4392, or the service plan has not been completed. When a determination is not completed 90 days from the date of application due to the lack of a completed assessment, Form ~~470-0659~~ 470-4392, or service plan, the application shall be denied. ~~The consumer shall have the right to appeal.~~

ITEM 7. Amend paragraph **83.3(3)“c”** as follows:

~~c. A consumer~~ An applicant must be given the choice between HCBS ill and handicapped waiver services and institutional care. ~~The income maintenance or service worker shall have the consumer applicant,~~ parent, guardian, or attorney in fact under a durable power of attorney for health care ~~complete and shall~~ sign Form ~~470-0659, Home and Community-Based Services Assessment or Reassessment, indicating~~ 470-5044, Service Worker Comprehensive Assessment, and indicate that ~~the consumer's choice of applicant has elected~~ home- and community-based services ~~or institutional care.~~

ITEM 8. Amend paragraph **83.22(1)“d”** as follows:

~~d. Certified as being in need of the intermediate or skilled level of care based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.~~

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) Elderly waiver services will not be provided when the person is an inpatient in a medical institution.

ITEM 9. Amend paragraph **83.23(3)“c”** as follows:

~~c. An applicant~~ must be given the choice between elderly waiver services and institutional care. ~~The consumer applicant,~~ guardian, or attorney in fact under a durable power of attorney for health care shall sign ~~the service plan~~ Form ~~470-4694, Case Management Comprehensive Assessment~~, indicating ~~the consumer's choice of caregiver~~ that the applicant has elected waiver services.

ITEM 10. Amend rule 441—83.29(249A) as follows:

**441—83.29(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.~~

ITEM 11. Amend paragraph **83.42(1)“b”** as follows:

~~b. Be certified in need of the level of care that, but for the waiver, would otherwise be provided in a nursing facility or hospital based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.~~

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) AIDS/HIV waiver services shall not be provided when the person is an inpatient in a medical institution.

ITEM 12. Amend paragraph **83.42(2)“a”** as follows:

~~a. The county social~~ department service worker shall perform an assessment of the person's need for waiver services and determine the availability and appropriateness of services. This assessment shall be based, in part, on information in the completed ~~Home and Community-Based Services Assessment or~~

~~Reassessment Service Worker Comprehensive Assessment, Form 470-0659~~ 470-5044. ~~Form 470-0659~~ 470-5044 shall be completed annually.

ITEM 13. Amend subparagraph **83.43(3)“a”(2)** as follows:

(2) The application is pending because a level of care determination has not been made ~~or pending~~ although the completed ~~assessment, Form 470-0659~~ 470-4392, Level of Care Certification for HCBS Waiver Program, has been submitted to the IME medical services unit.

ITEM 14. Amend paragraph **83.43(3)“c”** as follows:

~~c. A consumer~~ An applicant must be given the choice between HCBS AIDS/HIV waiver services and institutional care. ~~The income maintenance or service worker shall have the consumer applicant,~~ parent, guardian, or attorney in fact under a durable power of attorney for health care ~~complete and shall~~ sign Form ~~470-0659, Home and Community Based Services Assessment or Reassessment,~~ indicating the consumer's choice of 470-5044, Service Worker Comprehensive Assessment, and indicate that the applicant has elected home- and community-based services or institutional care.

ITEM 15. Amend rule 441—83.49(249A) as follows:

**441—83.49(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, an appeal may be filed with the department.~~

ITEM 16. Amend rule **441—83.60(249A)**, definitions of “Adult,” “Child,” “Counseling,” “Intermediate care facility for the mentally retarded (ICF/MR),” “Medical institution,” “Mental retardation,” “Qualified mental retardation professional” and “Related condition,” as follows:

*“Adult”* means a person with ~~mental retardation~~ an intellectual disability aged 18 or over.

*“Child”* means a person with ~~mental retardation~~ an intellectual disability aged 17 or under.

*“Counseling”* means face-to-face mental health services provided to the consumer and caregiver by a qualified ~~mental retardation~~ intellectual disability professional (QMRP QIDP) to facilitate home management of the consumer and prevent institutionalization.

*“Intermediate care facility for the mentally retarded persons with an intellectual disability (ICF/MR ICF/ID)”* means an institution that is primarily for the diagnosis, treatment, or rehabilitation of persons ~~who are mentally retarded~~ with an intellectual disability or persons with related conditions and that provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination and integration of health or related services to help each person function at the greatest ability and is an approved Medicaid vendor.

*“Medical institution”* means a nursing facility, intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability, or hospital which has been approved as a Medicaid vendor.

*“Mental retardation Intellectual disability”* means a diagnosis of mental retardation ~~under this division~~ which shall be made only when the onset of the person's condition was ~~prior to~~ before the age of 18 years and shall be based on an assessment of the person's intellectual functioning and level of adaptive skills. The diagnosis shall be made by a person who is a psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills. A diagnosis of mental retardation shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, published by the American Psychiatric Association.

*“Qualified ~~mental retardation~~ intellectual disability professional”* means a person who has at least one year of experience working directly with persons with ~~mental retardation~~ intellectual disability or other developmental disabilities and who is one of the following:

1. to 10. No change.

*“Related condition”* means a severe, chronic disability that meets all the following conditions:

1. It is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to ~~mental retardation~~ intellectual disability because the condition results in

impairment of general intellectual functioning or adaptive behavior similar to that of a ~~mentally retarded~~ person with an intellectual disability and requires treatment or services similar to those required for a ~~mentally retarded~~ person with an intellectual disability.

2. to 4. No change.

ITEM 17. Amend paragraph **83.61(2)“a”** as follows:

a. Applicants currently receiving Medicaid case management or services of a department-qualified ~~mental retardation~~ intellectual disability professional (~~QMRP~~ QIDP) shall have the applicable coordinating staff and other interdisciplinary team members complete Form 470-4694, Case Management Comprehensive Assessment, and identify the applicant’s needs and desires as well as the availability and appropriateness of the services.

ITEM 18. Amend rule 441—83.69(249A), introductory paragraph, as follows:

**441—83.69(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.~~

ITEM 19. Amend subrule 83.70(2) as follows:

**83.70(2) Continuation of waiver services.** The county shall continue to provide HCBS intellectual disability waiver services to members with ~~mental retardation~~ an intellectual disability who were enrolled in the HCBS MR program on August 1, 1996. The county shall provide HCBS intellectual disability waiver services to children who are enrolled in the HCBS intellectual disability waiver after the children turn 18. The state slot for a child in the HCBS intellectual disability waiver will transfer to the county of legal settlement when the child turns 18.

ITEM 20. Amend subrule 83.82(4) as follows:

**83.82(4) Securing a state payment slot.**

a. The county department office shall ~~contact the bureau of long-term care~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a payment slot is available for all new applications applicants for the HCBS BI waiver program. For new applications for people who require the ~~ICF/MR~~ ICF/ID level of care when the county of legal settlement has payment responsibility pursuant to rule 441—83.90(249A), the county department office shall inform the county of legal settlement of the application.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry and notify the county of those applicants for whom the county has payment responsibility by the end of the ~~second~~ fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid ~~recipients~~ members, the county department office shall ~~contact the bureau~~ make the entry and notify the county of those persons for whom the county has payment responsibility by the end of the ~~second~~ fifth working day after receipt of either Form 470-3349, Brain Injury Functional Assessment, ~~with the choice of the HCBS waiver indicated by the consumer’s signature, or a written request signed and dated by the consumer~~ waiver applicant.

b. ~~On the third day after the receipt of the completed Form 470-2927 or 470-2927(S), if~~ If no payment slot is available, the ~~bureau of long-term care~~ department shall enter the ~~consumer~~ applicant on a waiting list according to the following:

(1) ~~Consumers~~ Applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~date stamped in the county~~ received by the department office or upon receipt of disability determination, whichever is later. ~~Consumers~~ Applicants currently eligible for Medicaid shall be added to the waiting list on the basis of the date the ~~consumer~~ applicant requests HCBS BI program services as ~~documented by the date of the consumer’s signature on Form 470-2927 or 470-2927(S).~~

(2) In the event that more than one application is received at one time, ~~consumers applicants~~ shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

~~(2) c.~~ Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the waiting list.

(1) As slots become available, persons shall be selected from the waiting list to maintain the number of approved persons on the program based on their order on the waiting list.

(2) The county shall have financial responsibility for the state share of the costs of services for these ~~consumers applicants~~ as stated in rule 441—83.90(249A). The county shall include these ~~ICF/MR ICF/ID level of care brain-injured consumers applicants~~ in their annual county management plan which is approved by the state.

ITEM 21. Amend paragraph **83.83(2)“c”** as follows:

c. A ~~consumer~~ An applicant shall be given the choice between waiver services and institutional care. The ~~consumer applicant~~ or legal representative shall complete and sign Form 470-3349, ~~Brain Injury Functional Assessment 470-4694, Case Management Comprehensive Assessment~~, indicating that the consumer’s choice of caregiver applicant has elected home- and community-based services. This shall be arranged by the medical facility discharge planner or case manager.

ITEM 22. Amend subrule 83.87(3) as follows:

**83.87(3) Annual assessment.** The IME medical services unit shall assess the ~~consumer member~~ annually and certify the ~~consumer’s member’s~~ need for long-term care services. The IME medical services unit shall be responsible for determining the level of care based on the completed ~~Brain Injury Waiver Functional Assessment, Form 470-3283 470-4694, Case Management Comprehensive Assessment~~, and supporting documentation as needed.

ITEM 23. Amend rule 441—83.89(249A) as follows:

**441—83.89(249A) Appeal rights.** Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.~~

The applicant or ~~consumer member~~ for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2)“j.” If dissatisfied with the county’s decision, the applicant or ~~consumer member~~ may file an appeal with the department pursuant to rule 441—83.69(249A).

ITEM 24. Amend paragraph **83.102(1)“h”** as follows:

h. Be in need of skilled nursing or intermediate care facility level of care based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person’s condition, and annually for reassessment of the person’s level of care.

(2) Initial decisions on level of care shall be made for the department by the IME medical services unit within two working days of receipt of medical information. ~~After notice of an adverse decision by the IME medical services unit, the Medicaid applicant or recipient or the applicant’s or recipient’s representative may request reconsideration by the IME medical services unit pursuant to subrule 83.109(2). On initial and reconsideration decisions, the~~ The IME medical services unit determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

(3) Adverse decisions by the IME medical services unit ~~on reconsiderations~~ may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

ITEM 25. Amend paragraph **83.102(2)“a”** as follows:

a. The ~~consumer applicant~~ shall have a service plan which is developed by the ~~consumer applicant~~ and a department service worker. ~~This~~ The plan must be completed and approved prior to before service provision and at least annually thereafter.

(1) The service worker shall identify the need for service based on the needs of the ~~consumer applicant~~, as documented in Form 470-5044, Service Worker Comprehensive Assessment, as well as the availability and appropriateness of services.

(2) The service worker shall have a face-to-face visit with the member at least annually.

ITEM 26. Amend subrule 83.102(5) as follows:

**83.102(5) Securing a slot.**

a. The county department office shall ~~contact the bureau of long-term care for all cases~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a slot is available for all new applications applicants for the HCBS physical disability waiver program.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry by the end of the ~~second~~ fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, ~~submitted on or after April 1, 1999 or within five working days after receipt of disability determination, whichever is later.~~

(2) For current Medicaid ~~recipients members~~, the county department office shall ~~contact the bureau~~ make the entry by the end of the ~~second~~ fifth working day after receipt of Form 470-3502, Physical Disability Waiver Assessment Tool, ~~with the choice of HCBS waiver indicated by the signature of the consumer or a written request signed and dated by the consumer waiver applicant.~~

b. ~~On the third day after the receipt of the completed Form 470-2927 or 470-2927(S), Health Services Application, if~~ If no slot is available, the bureau of long-term care department shall enter consumers applicants on the HCBS physical disabilities waiver waiting list according to the following:

(1) ~~Consumers Applicants~~ not currently eligible for Medicaid shall be entered on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~submitted on or after April 1, 1999, and date stamped in the county received by the department office or upon receipt of disability determination, whichever is later.~~ Consumers Applicants currently eligible for Medicaid shall be added on the basis of the date the ~~consumer applicant~~ requests HCBS physical disability program services as ~~documented by the date of the consumer's signature on Form 470-2927 or 470-2927(S).~~ In the event that more than one application is received on the same day, ~~consumers applicants~~ shall be entered on the waiting list on the basis of the day of the month of their birthday, the lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) No change.

ITEM 27. Amend subrule 83.103(2) as follows:

**83.103(2) Approval of application for eligibility.**

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application.

(1) The discharge planner shall have the applicant's primary care provider complete Form 470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program, and submit it to the IME medical services unit.

(2) After completing the determination of the level of care needed by the applicant, the IME medical services unit shall inform the income maintenance worker and the discharge planner of the IME medical services unit's decision.

b. Applications for this waiver shall be initiated by the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care on behalf of the applicant who is residing in the community.

(1) ~~The applicant, the applicant's parent, the applicant's legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care~~ primary care provider shall complete Form

470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program, and submit it to the IME medical services unit.

(2) After completing the determination of the level of care needed by the applicant, the IME medical services unit shall inform the income maintenance worker and the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care.

c. No change.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant or the applicant's parent, legal guardian, or attorney in fact under a durable power of attorney for health care shall sign Form 470-3502, Physical Disability Waiver Assessment Tool 470-5044, Service Worker Comprehensive Assessment, indicating that the applicant's choice of caregiver applicant has elected home- and community-based services.

e. to g. No change.

ITEM 28. Amend subrule 83.107(2) as follows:

**83.107(2) Annual assessment.** The IME medical services unit shall review the ~~consumer's~~ member's need for continued care annually and recertify the ~~consumer's member's~~ member's need for long-term care services, pursuant to ~~the standards and subject to the reconsideration and appeal processes at~~ paragraph 83.102(1) "h" and the appeal process at rule 441—83.109(249A), based on the completed Form 470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program, and supporting documentation as needed. ~~Form 470-3502 is completed by the service worker at the time of recertification.~~

ITEM 29. Rescind and reserve subrule **83.109(2)**.

ITEM 30. Amend subrule 83.122(3) as follows:

**83.122(3) Level of care.** The ~~consumer~~ applicant must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit shall certify the ~~consumer's~~ applicant's level of care annually based on Form 470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment.

ITEM 31. Amend subrule 83.122(5) as follows:

**83.122(5) Choice of program.** The ~~consumer~~ applicant must choose HCBS children's mental health waiver services over institutional care, as indicated by the signature of the ~~consumer's~~ applicant's parent or legal guardian on Form 470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment.

ITEM 32. Amend subparagraph **83.123(1)"a"(2)** as follows:

(2) Form 470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment, with HCBS waiver choice indicated by signature of a Medicaid member's parent or legal guardian; or

ITEM 33. Amend subparagraphs **83.123(1)"c"(1)** and **(2)** as follows:

(1) The names of ~~consumers~~ applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~submitted and date-stamped in the local office~~ received by the department;

(2) The names of Medicaid members shall be added to the waiting list on the date Form 470-4211, Children's Mental Health Waiver Assessment, or a written request as specified in 83.123(2)"a"(3) is ~~date-stamped in the local office.~~ paragraph 83.123(1)"a."

ITEM 34. Amend subrule 83.127(3) as follows:

**83.127(3)** The service plan shall be based on information in Form 470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment.

ITEM 35. Amend rule 441—83.129(249A) as follows:

**441—83.129(249A) Appeal rights.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~An applicant or consumer may obtain a review of the IME medical services unit's level-of-care determination by sending a letter requesting a review to the IME Medical Services Unit, P.O. Box 36478, Des Moines, Iowa 50315. If dissatisfied with the IME medical services unit's review decision, the applicant or consumer may file an appeal with the department in accordance with 441—Chapter 7.~~